

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DERRICK ROYSTER,)	
)	
Plaintiff,)	
v.)	Civil Action No. 07-228 Erie
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

MEMORANDUM ORDER

Plaintiff's civil rights complaint was received by the Clerk of Court on August 23, 2007 and was referred to Chief United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Chief Magistrate Judge's Report and Recommendation [29], filed on December 2, 2008, recommends that the Defendant's motion [15] to dismiss or, in the alternative, motion for summary judgment, be granted. The parties were allowed ten (10) days from the date of service in which to file objections. Plaintiff's objections [30] were filed on December 11, 2008.

AND NOW, this 5th Day of January, 2009, upon de novo consideration of the Chief Magistrate Judge's Report and Recommendation [29] of December 2, 2008 as well as the objections filed thereto,

IT IS ORDERED that the Defendant's motion [15] to dismiss or, in the alternative, motion for summary judgment be, and hereby is, DENIED. Specifically, the Court finds that on the present record there is an issue of fact as to when the Defendant knew or reasonably should have known that the cause of the MRSA

infection was the removal of the laundry machines. See *Green v. United States*, 180 Fed. Appx. 310, 313, 2006 WL 839054, at **3 (3d Cir. March 31, 2006) (“[W]hen the fact of injury alone is insufficient to put an injured party on notice of its cause, the Supreme Court has indicated that the accrual of the claim is delayed until the injured party discovers that cause.”) (citing *United States v. Kubrick*, 444 U.S. 111, 122 (1979)).

Accordingly, this Court declines to adopt the Chief Magistrate Judge’s Report and Recommendation [29] dated December 2, 2008.

s/ SEAN J. McLAUGHLIN
Sean J. McLaughlin
United States District Judge

cm: All parties of record.
Chief U.S. Magistrate Judge Baxter